

ARTICLE 19

WATERSHED PROTECTION ORDINANCE

SECTION 1: GENERAL PROVISIONS

19.1 Title

This Ordinance shall be officially known as “The Midland Watershed Protection Ordinance”, but it may also be referred to as “The Phase II Stormwater Ordinance.” It may be furthermore referred to herein as “this Ordinance.”

19.2 Purpose and Authority

The purpose of this Ordinance is to protect, maintain and enhance the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of issues related to increased *stormwater runoff* and nonpoint and point source pollution, *buffer* protection, and illicit discharges into municipal stormwater systems. It has been determined that proper management of construction-related and post-*Development stormwater runoff*, illicit discharges, and *buffer* protection will minimize damage to public and private property and infrastructure; safeguard the public health, safety, and general welfare; and protect water and aquatic resources. This Ordinance also applies to all properties within the Town of Midland and its extraterritorial jurisdiction, regardless of whether the property is currently being “developed” or not.

The Town Council of the Town of Midland is authorized to adopt this Ordinance pursuant to North Carolina law, including but not limited to Article 14, Section 5 of the Constitution of North Carolina; North Carolina General Statutes §143-214.7 and rules promulgated by the Environmental Management Commission thereunder; Session Law 2004-163; Chapter §160A, §§ 174, 185; as well as Chapter §113A, Article 4 (Sedimentation Pollution Control); Article 21, Part 6 (Floodway Regulation); Chapter §160A, Article 19 (Planning and Regulation of *Development*); Chapter §153A, Article 18; Article 19, Part 4, Chapter §160A; G.S. §160A-372 (Open Space).

19.3 Findings

It is hereby determined that:

- 19.3-1 *Development* and *Re-Development* alter the hydrologic response of local *watersheds* and increase *stormwater runoff* rates and volumes, flooding, soil erosion, *stream* channel erosion, nonpoint and point source pollution, and

sediment transport and deposition, as well as reducing groundwater recharge;

- 19.3-2 These changes in *stormwater runoff* contribute to increased quantities of water-borne pollutants and alterations in hydrology that are harmful to public health and safety as well as to the natural environment; and
- 19.3-3 These effects can be managed and minimized by applying proper design and well-planned controls to manage *stormwater runoff* from *Development* sites.
- 19.3-4 Further, the Federal Water Pollution Control Act of 1972 (“Clean Water Act”) and federal Phase II Stormwater Rules promulgated under it, as well as rules of the North Carolina Environmental Management Commission promulgated in response to federal Phase II requirements, compel certain urbanized areas, including this jurisdiction, to adopt minimum stormwater controls such as those included in this Ordinance.
- 19.3-5 Therefore, the Town of Midland Town Council establishes this set of water quality and quantity regulations to meet the requirements of state and federal law regarding control of *stormwater runoff* and discharge.

19.4 Specific

This Ordinance seeks to meet its general purpose through the following specific objectives and means:

- 19.4-1 Establishing decision-making processes for *Development* that protect the integrity of *watersheds* and preserve the health of water resources;
- 19.4-2 Requiring that *new Development* and *Re-Development* maintain the pre-*Development* hydrologic response in their post-*Development* state as nearly as practicable for the applicable design storm to reduce flooding, *streambank* erosion, nonpoint and point source pollution and increases in *stream* temperature, and to maintain the integrity of *stream* channels and aquatic habitats;
- 19.4-3 Establishing minimum post-*Development* stormwater management standards and design criteria for the regulation and control of *stormwater runoff* quantity and quality;
- 19.4-4 Establishing design and review criteria for the construction, function, and use of structural stormwater *Best Management Practices (BMPs)* that may be used to meet the minimum post-*Development* stormwater management standards;
- 19.4-5 Encouraging the use of better management and site design practices, such as the use of vegetated conveyances for stormwater and the preservation of

greenspace, riparian *buffers* and other conservation areas to the maximum extent practicable;

- 19.4-6 Establishing provisions for the long-term responsibility for and maintenance of structural and nonstructural stormwater *Best Management Practices (BMPs)* to ensure that they continue to function as designed, are maintained appropriately, and pose no threat to public safety;
- 19.4-7 Establishing administrative procedures for the submission, review, approval and disapproval of stormwater management plans, for the inspection of approved projects, and to assure appropriate long-term maintenance.
- 19.4-8 Coordinating site design plans that include open space and natural areas with the Town of Midland Development Ordinance and the 2030 Comprehensive Land Development Plan, and any other plans as adopted by the Town of Midland.
- 19.4-9 Controlling illicit discharges into the municipal separate stormwater system.
- 19.4-10 Controlling erosion and sedimentation from construction activities.
- 19.4-11 Assigning responsibility and processes for approving the creation and maintenance of adequate drainage and flood damage prevention measures.

19.5 Applicability and Jurisdiction

- 19.5-1 General. Beginning with and subsequent to its effective date, this Ordinance shall be applicable to all properties in the Town of Midland and its extraterritorial jurisdiction, including, but not limited to, site plan applications, subdivision applications, and grading applications, unless exempt pursuant to Subsection 19-5.2 of this Section, Exemptions. Properties need not be “under *development*” to be subject to the standards of this Ordinance.
- 19.5-2 Exemptions. The following are exempt from the requirements of this Article. The exemption shall not be construed to permit uses prohibited in the primary and/or overlay zoning district, or otherwise prohibited by this Ordinance.
 - (A) Lots of record of less than twenty thousand (20,000) square feet existing on October 1, 1993.
 - (B) The construction or modification of one single-family dwelling and its accessory structures on a lot.
 - (C) The construction of one two-family dwelling and its accessory structures(s) on a lot provided a sedimentation and erosion control plan is not required.

(D) Replacement of existing *Built-Upon Area* (BUA) on a lot developed with a like or lesser amount of new BUA, at the same location, or at a different location on the same zone lot if the *Planning, Zoning & Subdivision Administrator* has determined that equal or better water quality will result.

(E) Exemption to the Plan Submission Requirements of this Article:

- a. The placement of small accessory buildings or structures or small amounts of other *Built-Upon Area* on a lot developed with a nonresidential or multifamily use, provided that the total *Built-Upon Area* added after the effective date of this Ordinance, is no greater than six hundred (600) square feet and provided that less than one acre of land is disturbed shall be exempt from the plan submission requirements of this Article. This exempted *Built-Upon Area* or land disturbance shall not be placed within a required *surface water buffer*. This exemption shall not apply to a lot with a *Watershed Development Plan* on file with the Planning Department.

(F) No lot or property shall be exempt from the *buffer* protection requirements of this Ordinance.

19.5-3 No Development or re-Development Until Compliance and Permit. No *Development* or *Re-Development* shall occur except in compliance with the provisions of this Ordinance or unless exempted. No *Development* for which a permit is required pursuant to this Ordinance shall occur except in compliance with the provisions, conditions, and limitations of the permit.

19.5-4 Map. The provisions of this Ordinance shall apply within the areas designated on the map titled "Official Zoning Map of Town of Midland, North Carolina" ("the Stormwater Map"), which is adopted simultaneously herewith. The Stormwater Map and all explanatory matter contained thereon accompanies and is hereby made a part of this Ordinance. The Stormwater Map shall be kept on file by the Stormwater Administrator and shall be updated to take into account changes in the land area covered by this Ordinance and the geographic location of all structural BMPs permitted under this Ordinance. In the event of a dispute, the applicability of this Ordinance to a particular area of land or BMP shall be determined by reference to the North Carolina Statutes, the North Carolina Administrative Code, and local zoning and jurisdictional boundary ordinances.

19.5-5 Definitions. Definitions may be found in Article 3 "Definitions".

19.6 Interpretation

- 19.6-1 Meaning and Intent. All provisions, terms, phrases, and expressions contained in this Ordinance shall be construed according to the general and specific purposes set forth in Section 19.2, Purpose and Authority. If a different or more specific meaning is given for a term defined elsewhere in the Town of Midland Development Ordinance, the meaning and application of the term in this Ordinance shall control for purposes of application of this Ordinance.
- 19.6-2 Text Controls in Event of Conflict. In the event of a conflict or inconsistency between the text of this Ordinance and any heading, caption, figure, illustration, table, or map, the text shall control.
- 19.6-3 Authority for Interpretation. The Stormwater Administrator has authority to determine the interpretation of this Ordinance. Any person may request an interpretation by submitting a written request to the Stormwater Administrator, who shall respond in writing within 30 days. The Stormwater Administrator shall keep on file a record of all written interpretations of this Ordinance.
- 19.6-4 References to Statutes, Regulations, and Documents. Whenever reference is made to a resolution, ordinance, statute, regulation, manual (including the *Design Manual*), or document, it shall be construed as a reference to the most recent edition of such that has been finalized and published with due provision for notice and comment, unless otherwise specifically stated.
- 19.6-5 Computation of Time. The time in which an act is to be done shall be computed by excluding the first day and including the last day. If a deadline or required date of action falls on a Saturday, Sunday, or holiday observed by the Town of Midland, the deadline or required date of action shall be the next day that is not a Saturday, Sunday or holiday observed by the Town of Midland. References to days are calendar days unless otherwise stated.

19.7 Delegation of Authority

Any act authorized by this Ordinance to be carried out by the Stormwater Administrator of Town of Midland may be carried out by his or her designee.

19.8 Usage

- 19.8-1 Mandatory and Discretionary Terms. The words “shall,” “must,” and “will” are mandatory in nature, establishing an obligation or duty to comply with the particular provision. The words “may” and “should” are permissive in nature.

- 19.8-2 Conjunctions. Unless the context clearly indicates the contrary, conjunctions shall be interpreted as follows: The word “and” indicates that all connected items, conditions, provisions and events apply. The word “or” indicates that one or more of the connected items, conditions, provisions or events apply.
- 19.8-3 Tense, Plurals, and Gender. Words used in the present tense include the future tense. Words used in the singular number include the plural number and the plural number includes the singular number, unless the context of the particular usage clearly indicates otherwise. Words used in the masculine gender include the feminine gender, and vice versa.

19.9 Measurement and Computation

Lot area refers to the amount of horizontal land area contained inside the lot lines of a lot or site. Lot area does not include those portions of a lot or tract of land lying within public street and/or roadway right-of-way existing upon the effective date of this Ordinance.

19.10 Design Manual

- 19.10-1 References to *Design Manual*. The Stormwater Administrator shall use the policy, criteria, and information, including technical specifications and standards, in the most recent edition of the NC DWQ Stormwater BMP Manual (hereinafter referred to as the *Design Manual*) as the basis for decisions about stormwater permits and about the design, implementation and performance of structural and non-structural stormwater BMPs.

The *Design Manual* includes a list of acceptable stormwater treatment practices, including specific design criteria for each stormwater practice. Stormwater treatment practices that are designed, constructed, and maintained in accordance with these design and sizing criteria will be presumed to meet the minimum water quality performance standards of the Phase II laws.

- 19.10-2 Relationship of *Design Manual* to Other Laws and Regulations. If the specifications or guidelines of the *Design Manual* are more restrictive or apply a higher standard than other laws or regulations, that fact shall not prevent application of the specifications or guidelines in the *Design Manual*.

19.10-3 Changes to Standards and Specifications. If the standards, specifications, guidelines, policies, criteria, or other information in the *Design Manual* are amended subsequent to the submittal of an application for approval pursuant to this Ordinance but prior to approval, the new information shall control and shall be utilized in reviewing the application and in implementing this Ordinance with regard to the application.

19.11 Relationship to Other Laws, Regulations and Private Agreements

19.11-1 Conflicts of laws. This Ordinance is not intended to modify or repeal any other ordinance, rule, regulation or other provision of law. The requirements of this Ordinance are in addition to the requirements of any other ordinance, rule, regulation or other provision of law. Where any provision of this Ordinance imposes restrictions different from those imposed by any other ordinance, rule, regulation or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human or environmental health, safety, and welfare shall control.

19.11-2 Private Agreements. This Ordinance is not intended to revoke or repeal any easement, covenant, or other private agreement. However, where the regulations of this Ordinance are more restrictive or impose higher standards or requirements than such an easement, covenant, or other private agreement, the requirements of this Ordinance shall govern. Nothing in this Ordinance shall modify or repeal any private covenant or deed restriction, but such covenant or restriction shall not legitimize any failure to comply with this Ordinance. In no case shall the Town of Midland be obligated to enforce the provisions of any easements, covenants, or agreements between private parties.

19.12 Severability

If the provisions of any section, subsection, paragraph, subdivision or clause of this Ordinance shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or invalidate the remainder of any section, subsection, paragraph, subdivision or clause of this Ordinance.

19.13 Effective Date and Transitional Provisions

19.13-1 Effective Date. This Ordinance shall take effect on the same date as the larger document, known as the Midland Development Ordinance, of which this Ordinance is a part, shall become effective.

19.13-2 Final Approvals. Complete Applications All *Development* and *Re-Development* projects for which complete and full applications were submitted and approved by the Town of Midland prior to the effective date of this Ordinance and which remain valid, unexpired, unrevoked and not otherwise terminated at the time of *Development* or *Re-Development* shall be exempt from complying with all provisions of this Ordinance dealing with the control and/or management of post-construction runoff, but shall be required to comply with all other applicable provisions, including but not limited to illicit discharge provisions.

A phased *development* plan shall be deemed approved prior to the effective date of this Ordinance if it has been approved by all necessary government units, it remains valid, unexpired, unrevoked and not otherwise terminated, and it shows:

1. For the initial or first phase of *development*, the type and intensity of use for a specific parcel or parcels, including at a minimum, the boundaries of the project and a subdivision plan that has been approved.
2. For any subsequent phase of *development*, sufficient detail so that implementation of the requirements of this Ordinance to that phase of *development* would require a material change in that phase of the plan.

19.13-3 Violations Continue. Any violation of provisions existing on the effective date of this Ordinance shall continue to be a violation under this Ordinance and be subject to penalties and enforcement under this Ordinance unless the use, *Development*, construction, or other activity complies with the provisions of this Ordinance.

SECTION 2: ADMINISTRATION AND PROCEDURES

19.14 Review and Decision-Making Entities

- 19.14-1 Stormwater Administrator. A Stormwater Administrator shall be designated by the Town Council to administer and enforce this Ordinance.
- 19.14-2 Powers and Duties. In addition to the powers and duties that may be conferred by other provisions of the Town of Midland Development Ordinance and other laws, the Stormwater Administrator shall have the following powers and duties under this Ordinance:
- (A) To review and approve, approve with conditions, or disapprove applications for approval of plans pursuant to this Ordinance.
 - (B) To make determinations and render interpretations of this Ordinance.
 - (C) To establish application requirements and schedules for submittal and review of applications and appeals, to review and make recommendations to the Town Council on applications for *Development* or *Re-Development* approvals.
 - (D) To enforce the provisions of this Ordinance in accordance with its enforcement provisions.
 - (E) To maintain records, maps, forms and other official materials as relate to the adoption, amendment, enforcement, and administration of this Ordinance.
 - (F) To provide expertise and technical assistance to the Town Council, upon request.
 - (G) To designate appropriate other person(s) who shall carry out the powers and duties of the Stormwater Administrator.
 - (H) To take any other action necessary to administer the provisions of this Ordinance.

19.15 Review Procedures

- 19.15-1 Permit Required; Must Apply for Watershed Approval (or Permit). An approved *Watershed* Plan (which may be used interchangeably with the term “stormwater permit” or “permit”) is required for all *development* and *re-development* unless exempt pursuant to this Ordinance. Approval may only be issued subsequent to a properly submitted and reviewed permit application, or plan, pursuant to this section.
- 19.15-2 Effect of Permit. A stormwater permit shall govern the design, installation, and construction of stormwater management and control practices on the

site, including structural BMPs and elements of site design for stormwater management other than structural BMPs.

The permit is intended to provide a mechanism for the review, approval, and inspection of the approach to be used for the management and control of stormwater for the *Development* or *Re-Development* site consistent with the requirements of this Ordinance, whether the approach consists of structural BMPs or other techniques such as low-impact or low-density design. The permit does not continue in existence indefinitely after the completion of the project; rather, compliance after project construction is assured by the maintenance provisions of this Ordinance.

- 19.15-3 Authority to File Applications. All applications required pursuant to this Code shall be submitted to the Stormwater Administrator by the land owner or the land owner's duly authorized agent. An original signature of the property owner shall be required on the cover sheet of the site plan submittal or application.
- 19.15-4 Application Contents and Form. The Stormwater Administrator shall establish requirements for the content and form of all applications and shall amend and update those requirements from time to time. At a minimum, the stormwater permit application shall describe in detail how *post-development stormwater runoff* will be controlled and managed, the design of all stormwater facilities and practices, and how the proposed project will meet the requirements of this Ordinance.
- 19.15-5 Submission Schedule. The Stormwater Administrator shall establish a submission schedule for applications. The schedule shall establish deadlines by which complete applications must be submitted for the purpose of ensuring that there is adequate time to review applications, and that the various stages in the review process are accommodated.
- 19.15-6 Review Fees. The Town Council shall establish review fees as well as policies regarding refund of any fees upon withdrawal of an application, and may amend and update the fees and policies from time to time.
- 19.15-7 Submittal of Complete Application. Applications shall be submitted to the Stormwater Administrator pursuant to the application submittal schedule in the form established by the Stormwater Administrator, along with the appropriate fee established pursuant to this section.

An application shall be considered as timely submitted only when it contains all elements of a complete application pursuant to this Ordinance, along with the appropriate fee. If the Stormwater Administrator finds that an application is incomplete, the applicant shall be notified of the deficient elements and shall be provided with an opportunity to submit a complete application. However, the submittal of an incomplete application shall not suffice to meet a deadline contained in the submission schedule established above.

19.15-8 Review. The Stormwater Administrator shall review the application and determine whether the application complies with the standards of this Ordinance.

19.15-9 Approval. If the Stormwater Administrator finds that the application complies with the standards of this Ordinance, the Stormwater Administrator shall approve the application. The Stormwater Administrator may impose conditions of approval as needed to ensure compliance with this Ordinance. The conditions shall be included as part of the approval.

19.15-10 Application Fails to Comply. If the Stormwater Administrator finds that the application fails to comply with the standards of this Ordinance, the Stormwater Administrator shall notify the applicant and shall indicate how the application fails to comply. The applicant shall have an opportunity to submit a revised application.

19.15-11 Revision and Subsequent Review. A complete revised application shall be reviewed by the Stormwater Administrator after its re-submittal and shall be approved, approved with conditions, or disapproved.

If a revised application is not re-submitted within sixty (60) calendar days from the date the applicant was notified, the application shall be considered withdrawn, and a new submittal for the same or substantially the same project shall be required along with the appropriate fee for a new submittal.

Up to two (2) re-submittals of a revised application may be submitted without payment of an additional permit review fee. Any re-submittal after the second re-submittal shall be accompanied by an additional review fee, as established pursuant to this Ordinance.

19.16 Applications for Approval

19.16-1 Concept Plan and Consultation Meeting. Before a stormwater management permit application is deemed complete, the Stormwater Administrator or developer may request a consultation on a concept plan for the post-construction stormwater management system to be utilized in the proposed *Development* project. This consultation meeting should take place at the time of the preliminary plan/plat of subdivision or other early step in the *Development* process. The purpose of this meeting is to discuss the post-construction stormwater management measures necessary for the proposed project, as well as to discuss and assess constraints, opportunities and potential approaches to stormwater management designs before formal site design engineering is commenced. Local *watershed* plans, the Town of Midland Development Ordinance, “Town Plan 2030 – Comprehensive Land Use Plan” as amended from time to time, and other relevant resource protection plans should be consulted in the discussion of the concept plan. Fees for such a meeting may be required.

To accomplish this goal, the following information should be included in the concept plan, which should be submitted in advance of the meeting.

19.16-2 Conditions / Proposed Site Plans. Existing conditions and proposed site layout sketch plans, which illustrate at a minimum: existing and proposed topography; *perennial and intermittent streams*; mapping of predominant soils from soil surveys (if available); boundaries of existing predominant vegetation; proposed limits of clearing and grading; and location of existing and proposed roads, buildings, parking areas and other *impervious surfaces*.

19.16-3 Natural Resources Inventory. A written or graphic inventory of natural resources at the site and surrounding area as it exists prior to the commencement of the project. This description should include a discussion of soil conditions, forest cover, geologic features, topography, *wetlands*, and native vegetative areas on the site, as well as the location and boundaries of other natural feature protection and conservation areas such as lakes, ponds, floodplains, *stream buffers* and other setbacks (e.g., drinking water well setbacks, septic setbacks, etc.). Particular attention should be paid to environmentally sensitive features that provide particular opportunities or constraints for *Development* and stormwater management.

- 19.16-4 Stormwater Management System Concept Plan. A written or graphic concept plan of the proposed post-*Development* stormwater management system including: preliminary selection and location of proposed structural stormwater controls; low-impact design elements; location of existing and proposed conveyance systems such as grass channels, swales, and storm drains; flow paths; location of floodplain/floodway limits; relationship of site to upstream and downstream properties and drainages; and preliminary location of any proposed *stream* channel modifications, such as bridge or culvert crossings.
- 19.16-5 Management Permit Application. The stormwater management permit application shall detail how post-*Development stormwater runoff* will be controlled and managed and how the proposed project will meet the requirements of this Ordinance, including “Section 3, Standards”. All such plans shall be prepared by a qualified registered North Carolina professional engineer, surveyor, or landscape architect, and the engineer, surveyor, or landscape architect shall perform services only in their area of competence, and shall verify that the design of all stormwater management facilities and practices meets the submittal requirements for complete applications, that the designs and plans are sufficient to comply with applicable standards and policies found in the *Design Manual*, and that the designs and plans ensure compliance with this Ordinance. The submittal shall include all of the information required in the submittal checklist established by the Stormwater Administrator. Incomplete submittals shall be treated pursuant to Section 19.15-10 (Application Fails to Comply).
- 19.16-6 As-Built Plans and Final Approval. Upon completion of a project, and before a certificate of occupancy shall be granted, the applicant shall certify that the *completed* project is in accordance with the approved stormwater management plans and designs, and shall submit actual “as built” plans for all stormwater management facilities or practices after final construction is *completed*.

The plans shall show the final design specifications for all stormwater management facilities and practices and the field location, size, depth, and planted vegetation of all measures, controls, and devices, as installed. The designer of the stormwater management measures and plans shall certify, under seal, that the as-built stormwater measures, controls, and devices are in compliance with the approved stormwater management plans and designs and with the requirements of this Ordinance. A final inspection and

approval by the Stormwater Administrator shall occur before the release of any performance securities.

- 19.16-7 Other Permits. No certificate of compliance or occupancy shall be issued by the Town of Midland or Cabarrus County without final as-built plans and a final inspection and approval by the Stormwater Administrator, except where multiple units are served by the stormwater practice or facilities, in which case the Town of Midland or Cabarrus County may elect to withhold a percentage of permits or certificates of occupancy until as-built plans are submitted and final inspection and approval has occurred.
- 19.16-8 Plans Required for *Buffer* Encroachments. Site plans, prepared by a licensed professional engineer, professional land surveyor, or landscape architect are required to be submitted to the Town of Midland prior to any encroachment into a required *buffer*. Fees may apply to such a review by the Town of Midland.

19.17 Approvals

- 19.17-1 Effect of Approval. Approval authorizes the applicant to go forward with only the specific plans and activities authorized in the permit. The approval shall not be construed to exempt the applicant from obtaining other applicable approvals from local, state, and federal authorities.
- 19.17-2 Time Limit/Expiration/Extension. An approved plan shall become null and void if the applicant fails to make *substantial progress* (i.e. building permits must be open and active on the site) on the site within two years after the date of approval. The Stormwater Administrator may grant a single, one-year extension of this time limit, for good cause shown, upon receiving a written request from the applicant before the expiration of the approved plan. In granting an extension, the Stormwater Administrator may require compliance with standards adopted since the original application was submitted unless there has been substantial reliance on the original permit and the change in standards would infringe the applicant's vested rights.

19.18 Appeals

- 19.18-1 Filing of Appeal and Procedures. Appeals shall be taken within 30 days by filing a notice of appeal and specifying the grounds for appeal on forms

provided by the Town of Midland. The Stormwater Administrator shall transmit to the Board of Adjustment all documents constituting the record on which the decision appealed from was taken. The hearing conducted by the Board of Adjustment shall be conducted in the nature of a quasi-judicial proceeding with all findings of fact supported by competent, material evidence.

19.18-2 Review by Superior Court. Every decision of the Board of Adjustment shall be subject to Superior Court review by proceedings in the nature of certiorari. Petition for review by the Superior Court shall be filed with the Clerk of Superior Court within thirty (30) days after the latter of the following:

1. The decision of the Board of Adjustment is filed; or
2. A written copy of the decision is delivered to every aggrieved party who has filed a written request for such copy with the Chair of the Board of Adjustment at the time of its hearing of the case.

SECTION 3: STANDARDS

19.19 General Standards

All *Development* and *Re-Development* to which this Ordinance applies shall comply with the standards of this section.

19.19-1 Development Standards for Low-Density Projects.

Low-density projects shall comply with each of the following standards:

- (A) *Stormwater runoff* from the *Development* shall be transported from the *Development* by vegetated conveyances to the maximum extent practicable.
- (B) All *built-upon area* shall be at a minimum of 50 feet landward of all perennial and intermittent surface waters. A perennial or intermittent surface water shall be deemed present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture (USDA) or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B .0233 (3)(a) or similar site-specific determination made using *Division*-approved methodology by a qualified professional.
- (C) The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as a recorded deed restriction or protective covenants, to ensure that future *Development* and *Re-Development* maintains the site consistent with the approved project plans.
- (D) If discrepancies arise in *stream* classification between the applicant and the Town of Midland, the Town at its sole discretion, may request that an independent evaluation be performed by a 3rd party professional who is qualified to make such determinations. Costs for such an evaluation may be required to be borne by the applicant, at the discretion of the Town of Midland.

19.19-2 Development Standards for High-Density Projects.

High-density projects shall implement stormwater control measures (also referred to as *Best Management Practices*, or *BMPs*) that comply with each of the following standards:

- (A) The measures shall control and treat runoff from the first inch of rain. Runoff volume drawdown time shall be a minimum of 48 hours, but not more than 120 hours.

- (B) All structural stormwater treatment systems used to meet these requirements shall be designed to have a minimum of 85% average annual removal for Total Suspended Solids (TSS);
- (C) General engineering design criteria for all projects shall be in accordance with 15A NCAC 2H .1008(c), as explained in the Design Manual;
- (D) All *built-upon area* shall be at a minimum of 100 feet landward of all perennial and 50 feet for intermittent surface waters. A surface water shall be deemed present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture (USDA) or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B .0233 (3)(a) or similar site-specific determination made using *Division*-approved methodology, or as in 19-19.1 (D)
- (E) The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as recorded deed restrictions or protective covenants, to ensure that future *Development* and *Re-Development* maintains the site consistent with the approved project plans.

19.20 Standards for Stormwater Control Measures

19.20-1 Evaluation According to Contents of Design Manual

All stormwater control measures and stormwater treatment practices (also referred to as Best Management Practices, or BMPs) required under this Ordinance shall be evaluated by the Stormwater Administrator according to the policies, criteria, and information, including technical specifications and standards and the specific design criteria for each stormwater practice, in the *Design Manual*. The Stormwater Administrator shall determine whether proposed BMPs will be adequate to meet the requirements of this Ordinance.

19.20-2 Determination of Adequacy; Presumptions and Alternatives

Stormwater treatment practices that are designed, constructed, and maintained in accordance with the criteria and specifications in the *Design Manual* will be presumed to meet the minimum water quality and quantity performance standards of this Ordinance. Whenever an applicant proposes to utilize a practice or practices not designed and constructed in accordance with the criteria and specifications in the *Design Manual*, the applicant shall have the burden of demonstrating that the practice(s) will satisfy the minimum water quality and quantity performance standards of this Ordinance. The Stormwater Administrator may require the applicant to provide the documentation,

calculations, and examples necessary for the Stormwater Administrator to determine whether such an affirmative showing is made.

19.20-3 Protection of Fragile Areas

For the purposes of this Article, slopes greater than 13.25%, wetlands, and drainage areas are considered fragile areas warranting protection.

(A) Slopes Greater than 13.25% and Wetlands: Slopes greater than 13.25% lying adjacent to natural *drainageways, intermittent streams, perennial streams and wetlands* shall remain in a natural and undisturbed condition except for road crossings, utilities, greenways, trails, sidewalks, erosion control devices and runoff control devices.

- (1) Dedication of these areas to the Town as drainageway and open space may be required wherever authorized by other provisions in local ordinances.
- (2) Where such dedication is not required, a water quality conservation easement shall be recorded over such wetlands and slopes.
- (3) Where a water quality conservation easement serves to bring two or more properties into compliance with the requirements of this Article, the Technical Review Committee may require that the wetlands and slopes covered by such easements be held as common area by an owners association.
- (4) The natural ground cover and the natural tree canopy within a water quality conservation easement shall be preserved with the following exceptions, which are permitted only after issuance of a permit by the Public Works Engineer:
 - a. Public utilities can be constructed and maintained by the Town of Midland or its designee;
 - b. Soil erosion and sedimentation control structures can be constructed and maintained by the developer of the property, subject to approval of a land-disturbing permit by the Public Works Engineer. After these structures are no longer needed, they shall be removed and the water quality conservation easement restored to a natural state – or the state the site was in before disturbance. Wherever a site was grass, it shall be replaced with grass, if it was forested, it must be replaced with trees and shrubs at the rate of 320 stems per acre;
 - c. Normal maintenance by mechanical means is allowed for the removal of dead, diseased, deformed, poisonous or noxious vegetation and pests harmful to health;
 - d. Mechanical mowing of utility areas is allowed for the purpose of controlling growth.

- e. Construction of approved passive recreational facilities or trails.
- (5) Nothing in this Subsection shall supersede the surface water *buffer* requirements of this Article.

(B) Drainage:

- (1) Drainage within new development shall be provided by means of either:
 - a. The installation of curb and gutter directing stormwater runoff from impervious surfaces to tree pits in accordance with standards established by the Technical Standards and Specifications Manual, *Design Manual* and Sections 11.6-3 (Street Trees) and Section 11.6-4 (Parking Lot Planting Areas) of the Midland Development Ordinance, or
 - b. By integrating open channels and sheet flow conditions when the stormwater departs from streets, roof tops, impervious surfaces, and/or parking areas to the maximum extent possible. If it is determined by the Technical Review Committee that better water quality protection is provided by alternative means, or to meet Town of Midland street standards, piped stormwater sewerage lines connecting BMP stormwater management systems or improved drainage may be permitted.
- (2) Drainageways shall have protected channels or remain in a natural, undisturbed state, except for road crossings, utilities, greenways, sidewalks, trails, erosion control devices, runoff control devices, and desirable artificial stream bank stabilization.
- (3) No new development shall be allowed in such protected or undisturbed areas; except that water dependent structures and public projects such as greenways may be allowed where no practicable alternative exists. Where these activities are allowed, they shall minimize built-upon surface area and maximize the utilization of Best Management Practices (BMP's).
- (4) Perennial and intermittent streams, lakes and ponds shall be protected as specified in this Article.

(C) Containment Structures:

- (1) Storage tanks for fuels and chemicals and associated pumping and piping shall have a spill containment system.
- (2) Such containment systems shall be of sufficient volume to contain 100% of all the tank(s) contents stored in the area and shall have a leak detection system installed.
- (3) The containment system shall be approved by the *Planning, Zoning & Subdivision Administrator* and the Cabarrus County Fire Marshall.
- (4) Such tanks and containment structures shall not be placed closer than 1,000 feet to the normal pool elevation of the applicable reservoir.
- (5) Such a containment system shall be a minimum of 50 feet from the property line of the facility if the area adjacent to the facility is in a zoning district other than light or heavy industrial.
- (6) Provisions shall be made to remove stormwater without removal of the product except for mistable materials. Contaminated water may not be discharged to the sewer system without a permit or to a water body or to a water-course.

(D) Point Source Discharges:

- (1) No expansion of any existing private wastewater facilities or establishment of any new public or private wastewater treatment plants of any kind shall be permitted in WCA districts.
- (2) Industrial pre-treatment facilities that prepare wastewater for discharge into a public sewer system shall be permitted in WCA districts.

19.20-4 Density Shifting

The location of development on soils and terrain most suited to protecting the water quality of water supply reservoirs is encouraged by *Density Shifting*. The overall density of a development utilizing *Density Shifting* shall meet all applicable density and stormwater runoff control requirements, except as modified by this Subsection. Built-upon areas within such developments shall be designed and sited to minimize stormwater runoff impact to the receiving waters, and the remainder of the tract shall remain in an undisturbed and/or natural state. *Density Shifting* is utilized in developments having lot sizes in accordance with the minimum area permitted by the general use zoning and/or

overlay zoning district(s). Through *Density Shifting*, developments may increase the maximum permitted residential densities otherwise established in this Article if the development rights attached to acreage located within a tier are transferred within the same property to an adjacent tier located farther from the water supply reservoir. Such transfer shall permit an additional number of dwelling units in the receiving tier. This addition is calculated by adding the density or dwelling units transferred from the adjacent tier to the density or dwelling units permitted in the receiving tier. The dwelling units permitted by acreage transfer from an adjacent tier shall be in addition to the number of dwelling units otherwise permitted in the receiving tier, but in no case shall the density allowed by the underlying zoning district be exceeded, unless flexible development options established by this Ordinance allow for increased densities.

19.20-5 Stormwater Management and Control

The minimum stormwater control(s) required shall be in accordance with Table 19.20-5, which follows, and the specific standards of this Ordinance.

Table 19.20-5
Minimum Stormwater Controls Required

Primary General Use Zoning District	Density (Residential Development)	Built-upon Area (Multifamily and Nonresidential Development)	Minimum Stormwater Control Required
All, except AG	≤ 1 du/2 acre	$\leq 9\%$ Built-Upon Area	None
All, except AG	≤ 1 du/acre (Low density development)	$\leq 24\%$ Built-Upon Area (Low density development)	Performance standards
All, except AG	> 1 du/acre (High density development)	$\leq 80\%$ Built-Upon Area (High density development)	Engineered stormwater controls

19.20-6 Performance Standards

Where compliance with performance standards is required in accordance with Table 19-20.5, the performance standards shall be in the form of a score sheet based on factors that minimize the impact of stormwater runoff from development. Plan approval for a proposed development shall require meeting one of two performance standards below:

- (A) **Score Sheet:** A minimum of one hundred (100) points is earned when the score sheet system for development is applied; Single-family and two-family residential development shall use the Residential Score Sheet Table 19.20-6(a). Nonresidential and multifamily development shall use Score Sheet in Table 19-20.6(b).
- (B) **Stormwater Control:** When a proposed development does not earn one hundred (100) points, an approved stormwater control measure or structure shall be provided, in compliance with the Town of Midland's stormwater guidelines for water quality and flood control.

Table 19.20-6(a)
RESIDENTIAL SCORESHEET

Maximum Points	Factor	Point Value	Points Earned
20	1. Zone		
	AG	10	
	SFR, MFO (Single-family detached)	15	
	R/MST, R/OMT (Single-family detached)	20	
25	2. Built-upon area		
	0--3 percent	25	
	3--7 percent	20	
	7--10 percent	15	
	10--15 percent	10	
25	3. Proximity to floodway as defined by the Federal Emergency Management Agency		
	More than 2,000 feet	25	

	1,000--2,000 feet	20	
	500-1,000 feet	15	
	100--500 feet	10	
	50--100 feet	5	
10	4. Soil type as defined by Cabarrus County Soil Survey		
	Slight	10	
	Moderate	5	
25	5. Drainage--Protect and use natural drainageways		
	Piped or improved drainage with riprap	5	
	Dispersed drainage or protected drainageways	10	
	Dispersed drainage and protected drainageways	20	
	Enhanced and protected natural drainageways	25	
25	6. Average slope		
	0--5 percent	25	
	6--10 percent	20	
	11--15 percent	5	
25	7. Land cover--High percentage of natural and stabilizing vegetation		
	50' stream buffer and natural or stabilizing vegetation on greater than 25 percent of the lot	25	
	50' stream buffer and natural or stabilizing vegetation on 15--25 percent of the lot	20	
	50' stream buffer and natural or stabilizing vegetation on 10--15 percent of the lot	15	
	Natural or stabilizing vegetation between units and water	10	
	Ornamental lawn on greater than 5 percent of the lot	5	
25	8. Runoff control strategies		
	Maximum runoff control	25	
	Moderate runoff control	20	
	Runoff control in excess of minimum requirements of	15	

	erosion control ordinance		
	Runoff control equal to minimum requirements	5	
10	9. Sewage disposal--Public sewer services	10	
10	10. Street and driveway design		
	With vegetated ditches	10	
	With piped drainage and/or curb and gutter and energy dissipaters	5	
Total: 200		Total	

Note:

(1) All plans must have 100 or more points and meet all other requirements to be approved.

SUBMISSION REQUIREMENTS

SINGLE FAMILY: Rated prior to approval of a Preliminary Plat. Individual homes on individual lots are not rated.

MULTI-FAMILY: Rated prior to approval of a site plan.

DEFINITIONS, EXPLANATIONS, AND STANDARDS:

1. Conditional uses will be given the appropriate bonus points if the use and site plan conditions meet the requirements of the bonus zone, such as concentrating development on suitable soils and terrain of the site.
2. A gravel surface is considered a Built-Upon Area.
3. Proximity to floodway is determined by measuring or scaling the distance from the floodway to the closets boundary of the tract.
4. *Protected Drainage-way* means drainage is channeled by pervious devices such as sod waterways, berms, channels or swales which have been constructed to resist soil erosion by either vegetation, netting, rip-rap, or a combination of those, and which allows infiltration of water into the soil.
5. *Dispersed Drainage* means spread out, as opposed to collecting the runoff in channels, so as to affect increased sheet flow and overland flow.

6. *Improved Drainage-way* means channeled by impervious surfaces such as curb and gutter or concrete (gunnite, bituminous, etc.) channels.
7. *Enhanced Drainage-way* means carried by existing natural drainageways which have been enhanced to resist soil erosion, including stream bank degradation.
8. *Average Slope* shall mean the maximum inclination of the land surface from the horizontal as measured in percentage slope. The average slope shall be determined for the entire lot, tract, or subdivision before development.
9. If all or part of an existing lot containing natural or stabilizing vegetation is dedicated to the public for park or drainageway and open space purposes, such land will count in computing score.
10. *Stabilizing Vegetation* means any vegetation that protects the soil against erosion.
11. *Maximum Runoff Control* means approximately one hundred (100%) percent of Built-Up Area runoff must pass through permanent wet detention pond(s).
12. *Moderate Runoff Control* means at least seventy-five (75%) percent of Built-Up Area runoff must pass through permanent wet detention pond(s).
13. *Runoff Control in Excess of Minimum Requirements of Erosion Control Ordinance* means at least fifty (50%) percent of Built-Up Area runoff must pass through permanent wet detention pond(s).
14. *Runoff Control Equal to Minimum Requirements* means velocity control of runoff.
15. *Detention Pond* means a pond which collects stormwater runoff, filters the water, and releases it slowly over a period of hours or days. It does not have a permanent pool and is sometimes referred to as a dry pond.
16. *Wet Detention Pond* means a pond that has a permanent pool and also collects stormwater runoff, filters the water, and releases it slowly over a period of days.
17. *Retention Pond* means a pond that has a permanent pool.
18. No points will be awarded for on-site septic tank systems or private treatment systems.

Table 19.20-6(b)
MULTIFAMILY AND NONRESIDENTIAL SCORESHEET

Maximum Points	Factor	Point Value	Points Earned
10	1. Built-upon area		
	Less than 7.5 percent impervious	10	
	7.5--15 percent impervious	5	
25	2. Proximity to floodway as defined by the FEMA		
	More than 2,000 feet	25	
	1,000--2,000 feet	20	
	500--1,000 feet	15	
	100--500 feet	10	
	50--100 feet	5	
15	3. Soils--Hydrologic soil group (when 50 percent or more of the site remains undisturbed)		
	B	15	
	C	5	
20	4. Drainageways		
	Vegetated waterways (swales)	10	
	Minor channels with riprap	10	
	Preserve natural drainageways	10	
	Preserve and protect natural drainageways	20	
25	5. Average slope (where 50 percent or more of site remains undisturbed)		
	0--6 percent	25	
	6--10 percent	20	
	10--15 percent	5	
25	6. Undisturbed area		

	Greater than 50 percent undisturbed	25	
	30--50 percent undisturbed	15	
	20--30 percent undisturbed	10	
10	7. Permanent erosion control		
	Revegetating bare soil areas	5	
	Revegetating and protecting concentrated flow areas	10	
60	8. Permanent runoff control strategies		
	Natural infiltration of required runoff from:		
	100 percent of Built-Up Area	60	
	75 percent of Built-Up Area	45	
	50 percent of Built-Up Area	30	
	Wet detention pond meeting performance standards controlling runoff from:		
	100 percent of Built-Up Area	50	
	75 percent of Built-Up Area	40	
	50 percent of Built-Up Area	25	
	Vegetative filter for sites with less than 25 percent Built-Up Area meeting performance standards	15	
	Dry detention pond	10	
10	9. Sewage disposal--Public sewer service	10	
15	10. Street and driveway design		
	With water from roadside swales or curb cuts directed into natural infiltration	15	
	With vegetated ditches	10	
	With piped drainage and/or curb and gutter and energy dissipators	5	
Total: 215		Total	

Notes:

(1) All plans must have 100 or more points and meet all other requirements to be approved.

SUBMISSION REQUIREMENTS:

RESIDENTIAL/COMMERCIAL/INDUSTRIAL SUBDIVISION: Rated prior to approval of preliminary plat.

RESIDENTIAL/INSTITUTIONAL/COMMERCIAL/INDUSTRIAL SITE PLANS: rated prior to approval of site plan unless lot was prequalified by subdivision.

COMMERCIAL/INDUSTRIAL PROJECTS WITHOUT SITE PLANS: Rated prior to approval of the building permit.

DEFINITIONS, EXPLANATION, AND STANDARDS:

1. Built-upon area coverage includes: paved and gravel parking lots, driveways, roads and streets, buildings or other structures which cover the soil. It is computed by the equation: acres Built-Upon Area divided by total acres in the tract times one-hundred (100%) percent.
2. Proximity to floodway is determined by measuring or scaling the distance from the floodway to the closet boundary of the tract.
3. *Hydrologic Soil Groups* as defined by the USDA - SCS Soil Survey of Cabarrus County, North Carolina.
4. Vegetated Waterways (Swales) are to be constructed according to USDA-SCS specifications or equivalent methods, and they are to include installation of channel liners (plastic, jute, or excelsior) where expected flow velocity (10-yr. Storm) exceeds three (3) feet per second. Minor Channels with Rip-rap are to meet Town of Midland specifications. Preserve Natural Drainageways shall mean no disturbance of natural drainageways by cutting, filling, channelization, or destroying natural vegetation.
5. *Preserve and Protect Natural Drainageways* shall mean protecting natural channels against stream bank erosion by rip-rap, or establishing soil stabilizing vegetation on stream banks and/or providing for a natural or revegetated stream of twenty-five (25) feet or more on each side of the stream.
6. *Average Slope* shall mean the maximum inclination of the land surface from the horizontal as measured in percentage slope. The average slope shall be determined for the entire lot, tract or subdivision before development.
7. *Undisturbed Area* shall be that portion of a lot, tract or subdivision which has not and will not be occupied and which has not and will not be graded to change land contours or to destroy existing vegetation. Only areas that are wooded or reforested are considered

undisturbed for the purposes of watershed protection score sheet evaluation.

8. *Re-vegetating Bare Soil Areas* shall mean providing a stabilizing vegetative cover on those areas disturbed by grading of the site where no other land cover (structure, etc.) is to be located.
9. All runoff control methods or devices shall meet or exceed Town of Midland design specifications. Retention ponds will be considered in lieu of wet detention ponds on a case-by-case basis.
10. No points will be allowed for on-site septic tank systems or private sewage treatment systems.

19.20-7 Engineered Stormwater Controls

In accordance with Table 19.20-5, a wet detention and/or retention pond or other best management practice (BMP) meeting the performance standards of control of the first one inch of rainfall and removal of 85% of total suspended solids (TSS) shall be used to control stormwater runoff in compliance with the Town's Stormwater Guidelines for Water Quality and Flood Control. In lieu of an on-site engineered stormwater control, developments may participate in a regional stormwater control program in compliance with the requirements of this Ordinance.

(A) Control of Runoff

Where engineered stormwater controls are required in accordance with Table 19.20-5, runoff shall be controlled in compliance with the Town of Midland's stormwater guidelines for water quality and flood control.

(B) Design Approval for Runoff Control Structures

All designs for runoff control structures shall meet the requirements of this Ordinance and shall be subject to the approval of the Stormwater Administrator or his/her designee.

19.20-8 Spill Risk Reduction in the GWA

(A) The following uses shall be prohibited in a GWA:

1. Landfills, except for on-site construction debris landfills less than three acres.
2. Land application of sludge/residuals or petroleum contaminated soils.

19.20-9 Surface Water Buffers

Perennial and Intermittent Surface Water Buffers Required: A surface water buffer shall be maintained with a minimum width as specified in Table 19.20-9 (Surface Water Buffers) below and measured landward from the normal pool elevation of water supply impoundment and from the bank of each side of perennial and intermittent streams, lakes and ponds. These waters are indicated on the most recent version of either the United States Geological Survey 1:24,000 scale (7.5 minute quadrangle) topographic maps or the Soil Survey maps developed by the USDA Natural Resource Conservation Service. In addition, other site specific evidence may indicate to the NC *Division* of Water Quality the presence of waters not shown correctly on either of these two maps. Where these two maps show waters where no actual stream or waterbody exists, or where waters exist that are not shown on these maps, a developer may submit site-specific evidence in support of such claim to the Technical Review Committee. If the Committee determines that a discrepancy exists, the evidence may be submitted to the NC *Division* of Water Quality for a determination in water supply watersheds. For streams in non-water supply watersheds, the Committee will use the maps referenced above or a classification study in accordance with the U.S Army Corps of Engineers or the N.C. *Division* of Water Quality methodology to determine stream classification. All surface water buffers shall be depicted as provided for in the stormwater guidelines for water quality and flood control.

Table 19.20-9
Surface Water Buffers

Classification	Low Density Development		High Density Development		
Perennial Surface Waters (Streams, Lakes, and Ponds)	50 feet		100 Feet		
	Zone 1 30 Feet	Zone 2 20 Feet	Zone 1 30 Feet	Zone 2 20 Feet	Zone 3 50 Feet
Intermittent Surface Waters (Streams, Lakes and Ponds)	50 Feet		50 Feet		
	Zone 1 30 Feet	Zone 2 20 Feet	Zone 1 30 Feet	Zone 2 20 Feet	

- (A) Buffer Zones: Required surface water buffers consist of two or three zones depending on the density of development and stream classification, as shown in Table 19.20-9. Zone 1 shall be the first 30 feet landward from

the top of the stream bank or mean high water line of other water bodies. Zone 2 shall begin at the outer edge of Zone 1 and extend landward a minimum of 20 feet. Zone 3 shall begin at the outer edge of Zone 2 and extend landward 50 feet. Zones 1 and 2 shall be undisturbed except as allowed in this Section. Zone 3 can be disturbed but must remain vegetated.

1) Exemption: The following waterbodies and land uses are exempt from the surface water buffer requirements:

- a. Ditches and manmade conveyances, other than modified natural streams which under normal conditions do not receive drainage from tributary ditches, canals or streams, unless the ditch or manmade conveyance delivers runoff directly to state-classified waters;
- b. Ponds and lakes created for animal watering, irrigation or other *agricultural uses* that are not a part of a natural drainageway that is classified;
- c. Water dependant structures provided that they are located, designed, constructed and maintained to provide maximum nutrient removal, to have the least adverse effects on aquatic life and habitat and to protect water quality; and
- d. Horticultural or silvicultural practices to maintain the health of individual trees and removal of individual trees which are in danger of causing damage to dwellings, other structures or the stream channel; however, other selective cutting of individual trees is not exempted and is not an allowed activity.

2) Zone 1:

The following practices and activities are prohibited in Zone 1:

- a. Land disturbing activities and placement of fill other than those allowed in Section 19-20.13(A)2.
- b. New development, except that water dependent structures as defined in Article 3, road crossings, railroad crossings, trail crossings, greenway crossings, sidewalk crossings, bridges, airport facilities and utility crossings may be allowed where no practical alternative exists, as determined by the Technical Review Committee. Activities that cross the stream shall be constructed as close to 90 degrees relative to the stream as practicable. Where these activities are allowed, they shall minimize built-upon surface area, divert runoff away from surface waters and protect water quality to the maximum extent practical through the use of Best Management Practices (BMP).
- c. New on-site sanitary sewage systems that use ground adsorption;

- d. The application of fertilizer;
- e. Any activity which threatens the health and function of the vegetation including, but not limited to, application of chemicals in amounts exceeding the manufacturer's recommended rate, uncontrolled sediment sources on adjacent lands, and the creation of any areas with bare soil.

The following sheet flow requirements must be met in Zone 1:

- a. Sheet flow must be maintained to the maximum extent practical through dispersing concentrated flow and re-establishment of vegetation to maintain the effectiveness of the surface water buffer.
- b. Concentrated runoff from new ditches or manmade conveyances must be dispersed into sheet flow before the runoff enters Zone 1 of the surface water buffer. Ditches and manmade conveyances existing at the time this Ordinance is adopted are exempt from this requirement; however, care shall be taken to minimize pollutant loading through these existing ditches and manmade conveyances from fertilizer application or erosion.
- c. Periodic corrective action to restore sheet flow shall be taken by the landowner if necessary to impede the formation of erosion gullies that allow concentrated flow to bypass treatment in the surface water buffer.

3) Zone 2:

The following practices and activities are prohibited in Zone 2:

- a. New development, except those allowed in Zone 1 and stormwater management facilities, utility construction and maintenance corridors, stream restoration projects, stream gauging, water wells, passive recreation facilities such as boardwalks, paved greenway trails, pathways and historic preservation and archaeological activities may be allowed where no practical alternative exists, as determined by the Technical Review Committee. Where these activities are allowed they shall minimize built-upon surface area, divert runoff away from surface waters and protect water quality to the maximum extent practical through the use of Best Management Practices.
- b. New on-site sewage systems that use ground adsorption;
- c. Any activity which threatens the health and function of the vegetation including, but not limited to, application of chemicals in amounts exceeding the manufacturer's recommended rate, uncontrolled sediment sources on adjacent lands, and the creation of any areas with bare soil.

The following sheet flow requirements must be met in Zone 2:

- a. Sheet flow must be maintained to the maximum extent practical through dispersing concentrated flow and re-establishment of vegetation to maintain the effectiveness of the surface water buffer
- b. Concentrated runoff from new ditches or manmade conveyances must be dispersed into sheet flow before the runoff enters Zone 2 of the riparian area. Existing ditches and manmade conveyances are exempt from this requirement; however, care shall be taken to minimize pollutant loading through these existing ditches and manmade conveyances from fertilizer application or erosion.
- c. Periodic corrective action to restore sheet flow shall be taken by the landowner if necessary to impede the formation of erosion gullies that allow concentrated flow to bypass treatment in the surface water buffer.

4) Zone 3:

Zone 3 is required for all high density development. Zone 3 may be disturbed, but it must remain vegetated. The following practices and activities are prohibited in Zone 3:

- a. New development, except those allowed in Zone 1 and stormwater management facilities, utility construction and maintenance corridors, stream restoration projects, stream gauging, water wells, passive recreation facilities such as boardwalks, paved greenway trails, pathways and historic preservation and archaeological activities may be allowed where no practical alternative exists, as determined by the Technical Review Committee. Where these activities are allowed they shall minimize built-upon surface area, divert runoff away from surface waters and protect water quality to the maximum extent practical through the use of Best Management Practices.
 - b. New on-site sewage systems that use ground adsorption;
 - c. Any activity which threatens the health and function of the vegetation including, but not limited to, application of chemicals in amounts exceeding the manufacturer's recommended rate, uncontrolled sediment sources on adjacent lands, and the creation of any areas with bare soil.
- (B) Channelization: Channelization of perennial or intermittent streams shall be prohibited, except for access crossings, erosion control devices and runoff control devices.
- (C) New Lots in the Surface Water Buffer: To the extent practical, no new single-family or two-family residential lots shall be created which are entirely or partly contained within the surface water buffer.

- (D) Removing vegetation in Buffers: Removal of trees, shrubs, or other vegetation from required undisturbed buffers may result in a Notice of Violation. This violation need not occur in conjunction solely with new development. Encroachment, unless approved by the Town of Midland, the US Army Corp of Engineers, the NCDENR *Division* of Water Quality, or any combination of these entities, shall be deemed a violation of this Ordinance. Violators are required to reestablish trees, shrubs, and vegetation as required by the Town of Midland. Trees and shrubs shall be replanted at the rate of 320 stems per acre. If disturbed areas were previously grassed areas, those areas may be reestablished with grass. Guidelines for reestablishment of riparian buffers may be obtained from NCDENR *Division* of Water Quality.

19.21 Regional Stormwater Control

19.21-1 Participation in a Regional Stormwater Control Program

(A) Public Regional Stormwater Control Program:

1. Where a regional stormwater control program has been established by one or more local governments, or by an authority operating on behalf of one or more local governments, a *development* shall participate in said program in lieu of certification of stormwater control required by this Article, provided that:
 - a) The *development* is within an area covered by a public regional stormwater control program;
 - b) Stormwater from the *development* drains to an existing or funded public regional engineered stormwater control structure (BMP) which is proposed to be built and is part of said program;
 - c) Participation is in the form of contribution of funds, contribution of land, contribution of engineered stormwater control structure (BMP) construction work, or a combination of these, the total value of which shall be in accordance with a fee schedule adopted by the town or in accordance with an intergovernmental agreement; and
 - d) The Technical Review Committee finds that the *watershed development* plan is in compliance with all other applicable requirements of this Ordinance.
2. *Developments* participating in a public regional stormwater control program are required to maintain pre-*development* hydrology at the project site.

3. Use of Contributions: Each contribution from a *development* participating in a public regional engineered stormwater control structure (BMP) program shall be used for acquisition, engineering, construction and/or maintenance of one or more such structures in the same water supply *watershed* in which *development* lies. The use of contributions for these purposes does not preclude the use or imposition of other revenue sources for these purposes.

(B) Private Regional Stormwater Control Program:

1. Where Permitted: Participation in a private regional engineered stormwater control program is permitted where a private off-site stormwater control program (BMP) has been established by one or more property owners and approved by the Technical Review Committee. A *development* may participate in said program in lieu of any certification of runoff control required by this Article, provided that:
 - a) The *development* is within an area covered by an off-site engineered stormwater control structure;
 - b) Runoff from the *development* drains to an existing engineered stormwater control structure;
 - c) The parties agree to share the cost of any required maintenance and/or construction;
 - d) The agreement runs with the property;
 - e) The agreement is recorded with the county Register of Deeds in accordance with this Article;
 - f) The *Planning, Zoning & Subdivision Administrator* finds that the *watershed development* plan is in compliance with all other applicable requirements of this Ordinance.
2. *Developments* participating in a private regional stormwater control program are required to maintain pre-*development* hydrology at the project site.

19.22 Variances and Modifications

19.22-1 *Watershed* Variances

- (A) Any person may petition the Town of Midland for a variance granting permission to use the person's land in a manner otherwise prohibited by this Ordinance. To qualify for a variance, the petitioner must show all of the following:

- 1) Unnecessary hardships would result from strict application of this Ordinance.
 - 2) The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property.
 - 3) The hardships did not result from actions taken by the petitioner.
 - 4) The requested variance is consistent with the spirit, purpose, and intent of this Ordinance; will secure public safety and welfare; and will preserve substantial justice.
- (B) The Town of Midland may impose reasonable and appropriate conditions and safeguards upon any variance it grants.
- (C) Statutory exceptions.

Notwithstanding subdivision (A) of this section, exceptions from the 50 foot landward location of *Built-Upon Area* requirement as well as the deed restrictions and protective covenants requirements shall be granted in any of the following instances:

- 1) When there is a lack of practical alternatives for a road crossing, railroad crossing, greenway crossing, trail crossing, sidewalk crossing, bridge, airport facility, or utility crossing as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.
- 2) When there is a lack of practical alternatives for a stormwater management facility; a stormwater management pond; or a utility, including, but not limited to, water, sewer, or gas construction and maintenance corridor, as long as it is located 15 feet landward of all perennial and intermittent surface waters and as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.
- 3) A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration, or density of the proposed activity and all alternative designs, the basic project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impact to surface waters.

(D) Minor Variances.

The Technical Review Committee shall review and decide requests for minor variances to the standards and restrictions pertaining to *Watershed* Protection. In order to approve a requested minor variance, the Technical Review Committee shall make findings of fact showing that:

- 1) There are practical difficulties or unnecessary hardships that would result from carrying out the strict letter of this Ordinance;
- 2) The variance is in harmony with the general purpose and intent of this Ordinance and preserves its spirit; and
- 3) The granting of the variance assures the public safety and welfare and does substantial justice.

The Technical Review Committee may attach conditions to the minor variance approval that support the purpose of this Ordinance. In addition, in the case of *water supply watersheds*, the town shall notify and allow a reasonable comment period for all other local governments having jurisdiction in the applicable designated *watershed* and the entity using the water supply for consumption where the minor variance is being considered.

(E) Major Variances.

Requests for major variances to the standards and restrictions pertaining to Article 19 (*Watershed* Protection) shall be to the N.C. Environmental Management Commission (EMC), following review and favorable recommendation by Town Council and after review and recommendation by the Technical Review Committee in accordance with the procedure set forth above. The major variance request shall be forwarded to the EMC with a report containing the findings of fact for Town Council's favorable recommendation, conclusions of law, a recommended decision, recommended conditions and a record of the Council's hearing of the request. Requests for major variances that do not receive a favorable recommendation shall be deemed denied and shall not be forwarded to the EMC.

(F) Annual Report of *Watershed* Variances. The *Planning, Zoning & Subdivision Administrator* shall keep a record of all *watershed* variances and this record shall be submitted for each calendar year to

the North Carolina *Division* of Water Quality in accordance with Section 19.22, *Watershed* Variances and Modifications.

- (G) Conditions. In approving a *watershed* variance, the Technical Review Committee may prescribe such reasonable and appropriate conditions and safeguards as will assure that the use of the property will be compatible with surrounding properties and will not alter the essential character of the neighborhood. Violations of conditions and safeguards that are part of the terms of a variance shall be deemed a violation of this Ordinance.
- (H) Appeals. Appeals may be made pursuant to Section 19.18, Appeals.
- (I) Duration. An approved *watershed* variance is part of an approved plan and shall have the same duration as the plan approval.

19.22-2 *Watershed* Modifications

- (A) Purpose. Recognizing that it is sometimes possible to provide equal or better performance in furtherance of the purposes of this Ordinance through use of means other than those specified herein, the Town Council finds it to be reasonably necessary and expedient that provisions be made for flexibility in administration of specified standards in this Ordinance.
- (B) Application. Proposed modifications of certain standards as applied to particular *developments* are properly evaluated only in conjunction with technical review of a site plan, subdivision plat, or *watershed* control plan. The modifications being applied for shall be portrayed on such plans and shall be approved, approved with conditions, or denied along with the approval or denial of such plans. To obtain approval of a modification, the burden shall be upon the developer or property owner to demonstrate that alternate standards portrayed on the plan will yield equal or better performance in furtherance of the purposes of this Ordinance.
- (C) Approval Body. Recognizing that the evaluation of proposed alternate means intended to offer equal or better performance normally requires technical expertise and is best accomplished in conjunction with review of *development* plans, the Town Council hereby designates the

Technical Review Committee to be the appropriate planning agency to approve modifications, except as otherwise provided in this Section.

(D) Watershed Modifications. Where the Technical Review Committee is authorized to grant modifications to Article 19, *Watershed* Protection, to accept an alternate means of accomplishing the purposes of this Ordinance, then such modifications shall only apply to provisions of this Ordinance that are more stringent than the State minimum *watershed* requirements. Where such requirements are State minimum requirements, then a departure from the requirements of this Ordinance shall only be considered per the requirements of Section 19.22, *Watershed* Variances & Modifications.

(E) Grounds for Modification. In considering modifications, the Technical Review Committee shall determine that the modification request meets one or more of the following findings:

- 1) Equal or Better Performance: A finding by the Technical Review Committee that equal or better performance in furtherance of the purposes of this Ordinance will result from the alternate standards portrayed on the plan constitutes grounds for approval of a modification. The evaluation of performance shall be made with regard to one purpose if only one purpose is affected. If performance with regard to more than one purpose is affected, the evaluation shall be made with regard to overall performance in furtherance of the purposes of this Ordinance. If an alternate standard as portrayed on the plan reduces performance with regard to one or more Ordinance purposes but produces a concomitant and counterbalancing superiority of performance with regard to one or more other purposes, a modification may be approved.
- 2) Physical Constraints: A finding by the Technical Review Committee that the size, topography, or *existing development* of the property or of adjoining areas prevents conformance with a standard constitutes grounds for approval of a modification.
- 3) Other Constraints: A finding by the Technical Review Committee that a federal, state or local law or regulation prevents conformance with a standard constitutes grounds for approval of a modification.

(F) Conditions. In approving a modification, the Technical Review Committee may prescribe such reasonable and appropriate conditions and safeguards as will assure that the use of the property will be compatible with surrounding properties, and will not alter the essential character of the neighborhood, and will support the purposes of this Ordinance being maintained. Violations of conditions and safeguards that are part of the terms of modification approval shall be deemed a violation of this Ordinance.

(G) Appeals. Appeals may be made pursuant to Section 19.18 “Appeals”.

(H) Duration. An approved modification or *watershed* variance is part of an approved plan and shall have the same duration as the plan approval.

SECTION 4: MAINTENANCE

19.23 General Standards for Maintenance

(A) Function of BMPs As Intended.

The owner of each structural BMP installed pursuant to this Ordinance shall maintain and operate it so as to preserve and continue its function in controlling stormwater quality and quantity at the degree or amount of function for which the structural BMP was designed.

(B) Annual Maintenance Inspection and Report.

Generally, the Town of Midland will make an annual inspection of structural BMP's to ensure compliance with this Ordinance. However, some existing BMP's are not accessible by the Town of Midland. In this case, the person responsible for maintenance of any structural BMP installed pursuant to this Ordinance may be required to submit to the Stormwater Administrator an inspection report from one of the following persons performing services only in their area of competence: a qualified registered North Carolina professional engineer, surveyor, landscape architect, soil scientist, aquatic biologist, or person certified by the North Carolina Cooperative Extension Service for stormwater treatment practice inspection and maintenance. The inspection report shall contain all of the following:

- 1) The name and address of the land owner;
- 2) The recorded book and page number of the lot of each structural BMP;
- 3) A statement that an inspection was made of all structural BMPs;
- 4) The date the inspection was made;
- 5) A statement that all inspected structural BMPs are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this Ordinance; and
- 6) The original signature and seal of the engineer, surveyor, or landscape architect.

All inspection reports shall be on forms supplied by the Stormwater Administrator. An original inspection report shall be provided to the Stormwater Administrator beginning one year from the date of as-built certification and each year thereafter on or before the date of the as-built certification.

19.24 Operation and Maintenance Agreement

(A) In General.

Prior to the conveyance or transfer of any lot or building site to be served by a structural BMP pursuant to this Ordinance, and prior to issuance of any permit for *Development* or *Re-Development* requiring a structural BMP pursuant to this Ordinance, the applicant or owner of the site must execute an operation and maintenance agreement that shall be binding on all subsequent owners of the site, portions of the site, and lots or parcels served by the structural BMP. Until the transference of all property, sites, or lots served by the structural BMP, the original owner or applicant shall have primary responsibility for carrying out the provisions of the maintenance agreement. Agreements made for the purpose of assigning responsibility for operations and maintenance to anyone other than the original applicant and/or owner shall be three party agreements requiring the approval by the Town of Midland prior to assignment. Assignment of responsibilities without prior approval are a violation of this Ordinance and shall be deemed null and void for the purposes of the requirements of this Ordinance, unless authorized and executed by the Town of Midland.

The operation and maintenance agreement shall require the owner or owners to maintain, repair and, if necessary, reconstruct the structural BMP, and shall state the terms, conditions, and schedule of maintenance for the structural BMP. In addition, it shall grant to the Town of Midland a right of entry in the event that the Stormwater Administrator has reason to believe it has become necessary to inspect, monitor, maintain, repair, or reconstruct the structural BMP; however, in no case shall the right of entry, of itself, confer an obligation on the Town of Midland to assume responsibility for the structural BMP.

The operation and maintenance agreement must be approved by the Stormwater Administrator prior to plan approval, and it shall be referenced on the final plat and shall be recorded with the county Register of Deeds upon final plat approval. A copy of the recorded maintenance agreement shall be given to the Stormwater Administrator within fourteen (14) days following its recordation.

(B) Special Requirement for Homeowners' and Other Associations.

For all structural BMPs required pursuant to this Ordinance and that are to be or are owned and maintained by a homeowners' association (HOA), property owners' association (POA), or similar entity, the required operation and maintenance agreement shall include all of the following provisions:

- 1) Acknowledgment that the association shall continuously operate and maintain the stormwater control and management facilities.
- 2) Establishment of an escrow account, which can be spent solely for sediment removal, structural, biological or vegetative replacement, major

repair, or reconstruction of the structural BMPs. If structural BMPs are not performing adequately or as intended or are not properly maintained, the Town of Midland, in its sole discretion, may remedy the situation, and in such instances the Town of Midland shall be fully reimbursed from the escrow account. Escrowed funds may be spent by the association for sediment removal, structural, biological or vegetative replacement, major repair, and reconstruction of the structural BMPs, provided that the Town of Midland shall first consent to the expenditure.

- 3) The Town of Midland requires that both developer contribution and annual membership funds fund the escrow account. Prior to plat recordation or issuance of construction permits, whichever shall first occur, the developer shall pay into the escrow account an amount equal to fifteen (15%) per cent of the initial construction cost of the structural BMPs, based on a cost estimate from a professional engineer (signed and sealed by the engineer). Two-thirds ($\frac{2}{3}$) of the total amount of fund budget shall be deposited into the escrow account within the first five (5) years and the full amount shall be deposited within ten (10) years following initial construction of the structural BMPs. Funds calculated to meet these funding thresholds shall be deposited each year into the escrow account. A portion of the annual membership assessments of the association shall include an allocation into the escrow account. Any funds drawn down from the escrow account shall be replaced in accordance with the schedule of anticipated work used to create the fund budget.
- 4) The percent of developer contribution and lengths of time to fund the escrow account may be varied by the engineer's cost estimate, depending on the design and materials of the stormwater control and management facility.
- 5) Granting to the Town of Midland a right of entry to inspect, monitor, maintain, repair, and reconstruct structural BMPs.
- 6) Allowing the Town of Midland to recover from the association and its members any and all costs the Town of Midland expends to maintain or repair the structural BMPs or to correct any operational deficiencies. Failure to pay the Town of Midland all of its expended costs, after forty-five days written notice, shall constitute a breach of the agreement. In case of a deficiency, the Town of Midland shall thereafter be entitled to bring an action against the association and its members to pay. Failure to pay shall be a lien against the real property upon which the cost was incurred, which lien shall be filed, have the same priority, and be collected as the lien for special assessment provided in Article 10 of Chapter 160A of the General Statutes of North Carolina.

- 7) A statement that this agreement shall not obligate the Town of Midland to maintain or repair any structural BMPs, and the Town of Midland shall not be liable to any person for the condition or operation of structural BMPs.
- 8) A statement that this agreement shall not in any way diminish, limit, or restrict the right of the Town of Midland to enforce any of its ordinances as authorized by law.
- 9) A provision indemnifying and holding harmless the Town of Midland for any costs and injuries arising from or related to the structural BMP, unless the Town of Midland has agreed in writing to assume the maintenance responsibility for the BMP and has accepted dedication of any and all rights necessary to carry out that maintenance.
- 10) HOA and POA documents shall also address how the required *buffers* shall be maintained and preserved.

19.24-1 Inspection Program

Inspections and inspection programs by the Town of Midland may be conducted or established on any reasonable basis, including but not limited to routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to, reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in BMPs; and evaluating the condition of BMPs.

The Town of Midland reserves the right to require owners to hire a registered professional engineer licensed to practice in the state of North Carolina for the purposes of inspecting devices in the event that the Town of Midland cannot access the BMP or for the purposes of certified sediment levels, soil medium efficiency, or other requirements to ensure that the BMP is operating as designed.

If the owner or occupant of any property refuses to permit such inspection, the Stormwater Administrator shall proceed to obtain an administrative search warrant pursuant to NCGS 15-27.2 or its successor. No person shall obstruct, hamper or interfere with the Stormwater Administrator while carrying out his or her official duties.

19.24-2 Performance Security for Installation and Maintenance

The Town of Midland may, at its discretion, require the submittal of a performance security or bond with surety, cash escrow, letter of credit or other

acceptable legal arrangement prior to issuance of a permit in order to ensure that the structural BMPs are:

- (A) installed by the permit holder as required by the approved stormwater management plan, and/or
- (B) maintained by the owner as required by the operation and maintenance agreement.

The amount of an installation performance security shall be the total estimated construction cost of the BMPs approved under the permit, plus a contingency amount to be determined by the Town of Midland, not to exceed 150% of the total project cost.

The amount of a maintenance performance security shall be the present value of an annuity of perpetual duration based on a reasonable estimate of the annual costs of inspection, operation and maintenance of the BMPs approved under the permit, at a discount rate that reflects the jurisdiction's cost of borrowing minus a reasonable estimate of long-term inflation. This estimate shall be based on a cost estimate prepared (and signed and sealed) by a professional engineer licensed to operate in North Carolina.

Informational insert: Some annual maintenance cost estimates for BMPs in North Carolina are available in Wassick and Hunt, "An Evaluation of Costs and Benefits of Structural Stormwater Best Management Practices in North Carolina," N.C. Extension Service, available online as of 3/16/05 at <http://www.bae.ncsu.edu/people/faculty/hunt/bmpcosts&benefits.pdf> Uses of Performance Security

The performance security shall contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain any actions which may be required of the applicant or owner in accordance with this Ordinance, approvals issued pursuant to this Ordinance, or an operation and maintenance agreement established pursuant to this Ordinance.

Upon default of the owner to construct, maintain, repair and, if necessary, reconstruct any structural BMP in accordance with the applicable permit or operation and maintenance agreement, the Stormwater Administrator shall obtain and use all or any portion of the security to make necessary improvements based on an engineering estimate. Such expenditure of funds shall only be made after requesting the owner to comply with the permit or maintenance agreement. In the event of a default triggering the use of installation performance security, the Town of Midland shall not return any of the unused deposited cash funds or other security, which shall be retained for maintenance.

If the Town of Midland takes action upon such failure by the applicant or owner, the Town of Midland may collect from the applicant or owner the difference between the

amount of the reasonable cost of such action and the amount of the security held, in addition to any other penalties or damages due.

Within sixty days of the final approval, the installation performance security shall be refunded to the applicant or terminated, except any amount attributable to the cost (plus % contingency) of ongoing construction associated with the BMPs covered by the security (i.e.- Landscaping). Any such ongoing construction or landscaping shall be inspected within six (6) months after installation for compliance with the approved plans and specifications and, if in compliance, the portion of the financial security attributable to landscaping shall be released.

19.24-3 Notice to Owners

The applicable operations and maintenance agreement, conservation easement, or dedication and acceptance into public maintenance (whichever is applicable), pertaining to every structural BMP and required *buffers* shall be referenced on the final plat and shall be recorded with the county Register of Deeds upon final plat approval. If no subdivision plat is recorded for the site, then the operations and maintenance agreement, conservation easement, or dedication and acceptance into public maintenance, whichever is applicable, shall be recorded with the county Register of Deeds so as to appear in the chain of title of all subsequent purchasers under generally accepted searching principles.

19.24-4 Records of Installation and Maintenance Activities

The owner of each structural BMP should keep records of inspections, maintenance, and repairs for at least five years from the date of creation of the record and shall submit the same upon reasonable request to the Stormwater Administrator.

19.24-5 Nuisance

The owner of each stormwater BMP, whether structural or non-structural BMP, shall maintain it so as not to create or result in a nuisance condition.

19.24-6 Maintenance Easement

Every structural BMP installed pursuant to this Ordinance shall be made accessible for adequate maintenance and repair by an access easement. The easement shall be recorded on a final plat at the Cabarrus County Register of Deeds.

SECTION 5: ENFORCEMENT AND VIOLATIONS

19.25 General

(A) Authority to Enforce.

The provisions of this Ordinance shall be enforced by the Stormwater Administrator, his or her designee, or any authorized agent of the Town of Midland. Whenever this section refers to the Stormwater Administrator, it includes his or her designee as well as any authorized agent of the Town of Midland.

(B) Violation Unlawful.

Any failure to comply with an applicable requirement, prohibition, standard, or limitation imposed by this Ordinance, or the terms or conditions of any permit or other *Development* or *Re-Development* approval or authorization granted pursuant to this Ordinance, is unlawful and shall constitute a violation of this Ordinance.

(C) Each Day a Separate Offense.

Each day that a violation continues shall constitute a separate and distinct violation or offense.

(D) Responsible Persons/Entities.

Any person who erects, constructs, reconstructs, alters (whether actively or passively), or fails to erect, construct, reconstruct, alter, repair or maintain any structure, BMP, practice, or condition in violation of this Ordinance shall be subject to the remedies, penalties, and/or enforcement actions in accordance with this section. Persons subject to the remedies and penalties set forth herein may include any architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that results in or constitutes a violation of this Ordinance, or fails to take appropriate action, so that a violation of this Ordinance results or persists; or an owner, any tenant or occupant, or any other person, who has control over, or responsibility for, the use or *Development* of the property on which the violation occurs.

For the purposes of this article, responsible person(s) shall include but not be limited to:

(1) Person Maintaining Condition Resulting In or Constituting Violation.

An architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that constitutes a violation of this Ordinance, or fails to take appropriate action, so that a violation of this Ordinance results or persists.

(2) Responsibility for Land or Use of Land.

The owner of the land on which the violation occurs, any tenant or occupant of the property, any person who is responsible for stormwater controls or practices pursuant to a private agreement or public document, or any person, who has control over, or responsibility for, the use, *Development* or *Re-Development* of the property.

19.25-1 Remedies and Civil Penalties

The remedies and penalties provided for violations of this Ordinance, whether civil or criminal, shall be cumulative and in addition to any other remedy provided by law, and may be exercised in any order.

(A) Remedies

1. Withholding of Certificate of Occupancy.

The Stormwater Administrator or other authorized agent shall withhold a certificate of occupancy (CO) for the building or other improvements constructed or being constructed on the site and served by the stormwater practices in question until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein.

2. Disapproval of Subsequent Permits and *Development* Approvals.

As long as a violation of this Ordinance continues and remains uncorrected, the Stormwater Administrator or other authorized agent shall withhold, and the Town of Midland Planning Board, Town Council, and/or TRC may disapprove, any request for permit or *Development* approval or authorization provided for by this Ordinance or the Town of Midland Development Ordinance for the land on which the violation occurs.

3. Injunction, Abatements, etc.

The Stormwater Administrator, with the written authorization of the Town Council, may institute an action in a court of competent jurisdiction for a mandatory or prohibitory injunction and order of abatement to correct a violation of this Ordinance. Any person violating this Ordinance shall be subject to the full range of equitable remedies provided in the General Statutes or at common law.

4. Correction as Public Health Nuisance, Costs as Lien, etc.

If the violation is deemed dangerous or prejudicial to the public health or public safety and is within the geographic limits prescribed by North Carolina G.S. § 160A-193, the

Stormwater Administrator, with the authorization of the Town Council, may cause the violation to be corrected and the costs to be assessed as a lien against the property.

5. Stop Work Order.

The Stormwater Administrator may issue a stop work order to the person(s) violating this Ordinance. The stop work or “notice of violation” order shall remain in effect until the person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations described therein. The stop work order may be withdrawn or modified to enable the person to take the necessary remedial measures to cure such violation or violations.

(B) Civil Penalties

Violations of this Ordinance may subject the violator to a civil penalty to be recovered in a civil action in the nature of a debt if the violator does not pay the penalty within 30 days after notice of the violation is issued by the Stormwater Administrator. Civil penalties may be assessed up to the full amount of penalty to which the Town of Midland is subject for violations of its Phase II Stormwater permit, or if no Phase II Stormwater permit exists for the jurisdiction, civil penalties may be assessed up to the full amount allowed by law.

19.25-2 Procedures

1. Initiation/Complaint.

Whenever a violation of this Ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint shall state fully the alleged violation and the basis thereof, and shall be filed with the Stormwater Administrator, who shall record the complaint. The complaint shall be investigated promptly by the Stormwater Administrator, Public Works Engineer, and/or by the *Zoning Enforcement Officer*.

2. Inspection.

The Stormwater Administrator shall have the authority, upon presentation of proper credentials, to enter and inspect any land, building, structure, or premises to ensure compliance with this Ordinance.

3. Notice of Violation and Order to Correct.

When the Stormwater Administrator finds that any building, structure, or land is in violation of this Ordinance, the Stormwater Administrator shall notify, in writing, the property owner and/or other person violating this Ordinance. The notification shall indicate the nature of the violation, contain the address or other description of the site

upon which the violation is occurring, order the necessary action to abate the violation, and give a deadline for correcting the violation. If civil penalties are to be assessed, the notice of violation shall also contain a statement of the civil penalties to be assessed, the time of their accrual, and the time within which they must be paid or be subject to collection as a debt.

The Stormwater Administrator may deliver the notice of violation and correction order personally; by the *Zoning Enforcement Officer*; by first class mail; by certified or registered mail with return receipt requested, or by any means authorized for the service of documents by Rule 4 of the North Carolina Rules of Civil Procedure.

If a violation is not corrected within a reasonable period of time, as provided in the notification, the Stormwater Administrator, Public Works Engineer, and/or by the *Zoning Enforcement Officer* may take appropriate action under this Ordinance to correct and abate the violation and to ensure compliance with this Ordinance.

4. Extension of Time

A person who receives a notice of violation and correction order, or the owner of the land on which the violation occurs, may submit to the Stormwater Administrator a written request for an extension of time for correction of the violation. On determining that the request includes enough information to show that the violation cannot be corrected within the specified time limit for reasons beyond the control of the person requesting the extension, the Stormwater Administrator, Public Works Engineer, and/or by the *Zoning Enforcement Officer* may extend the time limit as is reasonably necessary to allow timely correction of the violation, up to, but not exceeding 180 days. The Stormwater Administrator, Public Works Engineer, and/or by the *Zoning Enforcement Officer* may grant 30-day extensions in addition to the foregoing extension if the violation cannot be corrected within the permitted time due to circumstances beyond the control of the person violating this Ordinance. The Stormwater Administrator, Public Works Engineer, and/or by the *Zoning Enforcement Officer* may grant an extension only by written notice of extension. The notice of extension shall state the date prior to which correction must be made, after which the violator will be subject to the penalties described in the notice of violation and correction order.

5. Enforcement After Time to Correct.

After the time has expired to correct a violation, including any extension(s) if authorized by the Stormwater Administrator, Public Works Engineer, and/or by the *Zoning Enforcement Officer*, the Stormwater Administrator, Public Works Engineer, and/or by the *Zoning Enforcement Officer* shall determine if the violation is corrected. If the violation is not corrected, the Stormwater Administrator, Public Works Engineer, and/or

by the *Zoning Enforcement Officer* may act to impose one or more of the remedies and penalties authorized by this Ordinance.

6. Emergency Enforcement.

If delay in correcting a violation would seriously threaten the effective enforcement of this Ordinance or pose an immediate danger to the public health, safety, or welfare, then the Stormwater Administrator, Public Works Engineer, and/or by the *Zoning Enforcement Officer* may order the immediate cessation of a violation. Any person so ordered shall cease any violation immediately. The Stormwater Administrator, Public Works Engineer, and/or by the *Zoning Enforcement Officer* may seek immediate enforcement, without prior written notice, through any remedy or penalty authorized by this article.

SECTION 6: ILLICIT DISCHARGES

19.26 Illicit Discharges and Connections, Spills and Nuisances

Commentary: The federal EPA Phase II rule specifies that local communities shall prohibit any discharge to a municipal separate storm sewer system (MS4) unless it:

- consists of a discharge pursuant to an NPDES permit; or
- consists of a discharge from firefighting activities; or
- consists of a discharge in any of the following categories, and the operator of the small MS4 has not identified that category as a significant contributor of pollutants to its small MS4: Water line flushing; landscape irrigation; diverted *stream* flows; rising ground waters; uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)); uncontaminated pumped ground water; discharges from potable water sources; foundation drains; air conditioning condensation; irrigation water; springs; water from crawl space pumps; footing drains; lawn watering; individual residential car washing; flows from riparian habitats and *wetlands*; dechlorinated and/or salinated swimming pool discharges; and street wash water.

19.26-1 Illicit Discharges

No person shall cause or allow the discharge, emission, disposal, pouring, or pumping directly or indirectly to any stormwater conveyance, the waters of the State, or upon the land in manner and amount that the substance is likely to reach a stormwater conveyance or the waters of the State, any liquid, solid, gas, or other substance, other than stormwater; provided that non-stormwater discharges associated with the following activities are allowed and provided that they do not significantly impact water quality:

- 1) Water line flushing;
- 2) Landscape irrigation;
- 3) Diverted *stream* flows;
- 4) Rising ground waters;
- 5) Uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20));
- 6) Uncontaminated pumped ground water;
- 7) Discharges from potable water sources;
- 8) Foundation drains;
- 9) Air conditioning condensation;
- 10) Irrigation water;
- 11) Springs;
- 12) Water from crawl space pumps;
- 13) Footing drains;
- 14) Lawn watering;

- 15) Individual residential car washing;
- 16) Flows from riparian habitats and *wetlands*;
- 17) Dechlorinated swimming pool discharges;
- 18) Street wash water; and
- 19) Other non-stormwater discharges for which a valid NPDES discharge permit has been approved and issued by the State of North Carolina, and provided that any such discharges to the municipal separate storm sewer system shall be authorized by the Town of Midland.

Prohibited substances include but are not limited to: oil, anti-freeze, chemicals, animal waste, paints, garbage, and litter.

19.26-2 Illicit Connections

- (1) Connections to a stormwater conveyance or stormwater conveyance system that allow the discharge of non-stormwater, other than the exclusions described in subsection (A) above, are unlawful. Prohibited connections include, but are not limited to: floor drains, waste water from washing machines or sanitary sewers, wash water from commercial vehicle washing or steam cleaning, and waste water from septic systems.
- (2) Where such connections exist in violation of this section and said connections were made prior to the adoption of this provision or any other ordinance prohibiting such connections, the property owner or the person using said connection shall remove the connection within one year following the effective date of this Ordinance. However, the one-year grace period shall not apply to connections which may result in the discharge of *hazardous materials* or other discharges which pose an immediate threat to health and safety, or are likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat.
- (3) Where it is determined that said connection:
 - a) May result in the discharge of *hazardous materials* or may pose an immediate threat to health and safety, or is likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat, or
 - b) The Stormwater Administrator shall designate the time within which the connection shall be removed. In setting the time limit for compliance, the Stormwater Administrator shall take into consideration:
 - i) The quantity and complexity of the work,

- ii) The consequences of delay,
- iii) The potential harm to the environment, to the public health, and to public and private property, and
- iv) The cost of remedying the damage.

19.26-3 Spills

Spills or leaks of polluting substances released, discharged to, or having the potential to released or discharged to the stormwater conveyance system, shall be contained, controlled, collected, and properly disposed. All affected areas shall be restored to their preexisting condition.

Persons in control of the polluting substances immediately prior to their release or discharge, and persons owning the property on which the substances were released or discharged, shall immediately notify the Town of Midland Public Works Engineer, Town Council, or Fire Department of the release or discharge, as well as making any required notifications under state and federal law.

Notification shall not relieve any person of any expenses related to the restoration, loss, damage, or any other liability which may be incurred as a result of said spill or leak, nor shall such notification relieve any person from other liability which may be imposed by State or other law.

19.26-4 Nuisance

Illicit discharges and illicit connections which exist within the Town of Midland and/or its extraterritorial planning jurisdiction are hereby found, deemed, and declared to be dangerous or prejudiced to the public health or public safety and are found, deemed, and declared to be public nuisances. Such public nuisances shall be abated in accordance with the procedures set forth in this Ordinance, the Town of Midland Development Ordinance, the General Codes of the Town of Midland, or any other applicable laws, rules, or regulations.

19.27 Additional Standards for Special Situations

19.27-1 Pet waste

1. Pets At Large Prohibited

It shall be unlawful for the owner of any pet to allow the animal to be off the premises of his owner in the Town of Midland.

2. Restrictions on Pet Waste

- (1) It shall be unlawful for the owner or custodian of any pet to take it off the owner's own property limits without the means to properly remove and dispose of the pet's feces from any public or private property.
- (2) It is the responsibility of a pet's owner or custodian to clean up the pet's feces from any public or private property outside of the pet's owner's own property limits. Such property includes, but is not limited to, parks, rights-of-way, paths, and public access areas.
- (3) "Means to properly remove and dispose of feces" shall consist of having on or near one's person a device such as a plastic bag, or other suitable plastic or paper container, that can be used to clean up and contain pet waste until it can be disposed of in an appropriate container. Such a device must be produced and shown, upon request, to anyone authorized to enforce these ordinances.
- (4) This provision shall not apply to handicapped persons assisted by trained guide or assistance pets.
- (5) "Public nuisance" is defined to include "a pet which deposits feces on public property or on private property without the consent of the owner or person in lawful possession of the private property, and the person owning, possessing, harboring or having the care, charge, control or custody of the pet fails to remove the feces so deposited. Provided, however, this definition shall not apply to any pet assisting a handicapped person.

19.27-2 Onsite Wastewater Septic Systems

(A) Standards for Operation and Maintenance

Onsite systems for domestic wastewater covered by this Ordinance shall be operated and maintained so as to avoid adverse effects on surface water and groundwater, including eutrophication of surface water and microbial or nitrate contamination of groundwater. Septic tank residuals shall be pumped whenever necessary to assure the proper operation of the system to meet these standards, and the septage shall be reused or disposed of in a manner that does not present significant risks to human health, surface water or groundwater.